JRED Enterprises, Inc. d/b/a Deadline Express *and* Deadline Express Drivers Association. Case 13–CA–32234

May 18, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On February 4, 1994, the Acting General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 13–RC–18615. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On March 8, 1994, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On March 11, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 11, 1994, the Respondent filed a response. Thereafter, the General Counsel filed a response and the Respondent filed a reply thereto.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits its refusal to bargain and to furnish information to the Union, but attacks the validity of the certification on the basis of its contention concerning the status of the Union as a labor organization and the disagreement with the Board's disposition of its objections to the election. In addition, in its response to the Notice to Show Cause, the Respondent submits that it has newly discovered and previously unavailable evidence that there has apparently been a material change in representative from the Deadline Express Drivers Association (DEDA), the certified union, to the Service Employees International Union (SEIU), and that it believes such change was unaccompanied by any election. The Respondent contends that a hearing is required to resolve this issue before a bargaining order may issue.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We further find that there are no factual issues regarding the Union's request for information inasmuch as the Respondent admits that it refused to furnish the information. Although the Respondent denies that the information is necessary and relevant to the Union's performance of its duties, the description of the information sought on its face relates directly to the wages, hours, and terms and conditions of employment of the unit employees and we so find.[1] It is well established that wage and employment information of this type is presumptively relevant for purposes of collective bargaining and must be furnished on request.[2] In any event, the Respondent did not contest relevance in its response to the show cause order. We therefore find that the Respondent has not, by its denial, raised any issue requiring a hearing with respect to the Union's request for information.

Finally, we reject the Employer's contention that a hearing is required in this case as to whether there has been a change in the bargaining representative. The only evidence cited by the Employer supporting its claim that there has been an affiliation or merger between the DEDA and the SEIU is a notice headlined ''DEDA'' which announced a general membership meeting to be held on March 2, 1994, and invited employees to ''Come and meet your representatives from The Service Employees International Union. They are helping to negotiate your contract.'' On its face, this evidence indicates nothing more than that the DEDA has retained the SEIU to assist in negotiating the contract with the Respondent, not that there has actually been an affiliation or merger with the SEIU. Indeed, Respondent asserts only that ''an affiliation or merger or other transfer of authority and responsibility *may* have occurred'' (emphasis added). Accordingly, we find that this evidence, even assuming it is newly discovered and previously unavailable, is insufficient to raise an issue for hearing.[3]

[1] The Union requested that the Respondent furnish it with a list of all employees including home addresses, employment starting dates, job classifications, hourly wage rates and whether the employee received a commission and, if so, how much; a complete description of the medical insurance and a listing of those employees who participate in the medical insurance, whether their dependents are covered, and whether a premium is paid by the employee and, if so, how much; all written job descriptions; and all work rules and employment policies.

[2] See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp*., 233 NLRB 109 (1977).

[3] Cf. *National Posters*, 282 NLRB 997 (1987) (hearing ordered where respondent employer contended that it had previously unavailable evidence showing that certified local union no longer existed due to a merger between local's parent organization and another

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation, with an office and place of business in Chicago, Illinois, has been engaged in the business of messenger service and small package delivery.

During the past calendar year the Respondent, in conducting its business operations, derived gross revenues in excess of $1 million and, during the same period of time, provided services valued in excess of $50,000 to enterprises located within the State of Illinois which are directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.[4]

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held July 9, 1993, the Union was certified on November 30, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time automobile, bicycle, motorcycle and walker messengers, order takers, dispatchers and dispatcher aides employed by the Employer at its facility presently located at 449 North Union Street, Chicago, Illinois; but excluding sales employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since December 1, 1993, the Union has requested the Respondent to bargain and to furnish information, and, since January 7, 1994, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 7, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, JRED Enterprises, Inc. d/b/a Deadline Express, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Deadline Express Drivers Association as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

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union; that local union's governing body had been taken over by new officers and a new organizational structure of a different union with different dues and membership requirements; and that local transacted business under a different name and structure).

[4] Although the Respondent denies the complaint's allegation that the Union is a labor organization, we find that this denial does not raise an issue warranting a hearing. As noted by the General Counsel, the status of the Union as a labor organization was decided in Case 13–RC–18615 and thus cannot be relitigated in this proceeding. The Respondent's other affirmative defenses, viz., the Union received unlawful assistance in its formation and creation and the Union is a dominated labor organization, each allege violations of Sec. 8(a)(2) of the Act. The issue presented by these defenses could have been raised in the representation case, have not been the subject of unfair labor practice charges, and in any event are not appropriate for resolution in this proceeding. In addition, the Respondent's affirmative defense that the Union has a conflict of interest that precludes it from meeting its duty of fair representation is also an issue which could have been and was not presented in the underlying representation proceeding and thus cannot be raised in this proceeding.

ment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time automobile, bicycle, motorcycle and walker messengers, order takers, dispatchers and dispatcher aides employed by the Employer at its facility presently located at 449 North Union Street, Chicago, Illinois; but excluding sales employees, office clerical employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Chicago, Illinois, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 13 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Deadline Express Drivers Association as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time automobile, bicycle, motorcycle and walker messengers, order takers, dispatchers and dispatcher aides employed by us at our facility presently located at 449 North Union Street, Chicago, Illinois; but excluding sales employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

JRED ENTERPRISES, INC. D/B/A DEADLINE EXPRESS